Supreme Court, U.S.
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In the
Supreme Court of the United States

RAHUL SINGH,

Petitioner,

v.

CHARLES REED, DAVID T. HAYHURST, JEREMY GOLDEN, JOEL C. GOLDEN, NANCY A. MARLIN, STEPHEN WEBER, SUSAN WESTOVER,

Respondents.

On Petition For Writ Of Certiorari
To The Court Of Appeals For The Ninth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Will this court please give colored citizens equal rights as whites by fulfilling its obligation as set forth by Title VII of Civil Rights Acts of 1964 to grant the petition to review state court adjudications and adjudicate federal civil rights claims to fully protect federal civil rights under Title VII?

2. Will this court, at the very least, give colored citizens equal rights as whites by fulfilling its obligation to grant the petition to mandate lower federal courts to review state court adjudications and adjudicate federal civil rights claims to fully protect federal civil rights under

a) Title VI of the Civil Rights Act of 1964,
b) Title VII of the Civil Rights Act of 1964,
c) Title IX of the Education Amendments of 1972,
d) The Civil Rights Remedy Equalization Act of 1986,
e) 42 U.S.C. § 1981, § 1983 and § 1985.

3. Will this court please fulfill its obligation and give colored citizens equal rights as whites by providing us with the protection of the authority of *Haddle v. Garrison* (1998) 525 U.S. 121, 126-127:

> "Petitioner did bring a claim for tortious interference with his employment relation against respondents in Georgia state court, but that claim was dismissed on summary judgment and the dismissal affirmed on appeal The ultimate course of petitioner's state-law claim, however, has no bearing on whether he can state a claim for damages under § 1985(2) in federal court."

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IN THE
SUPREME COURT OF THE UNITED STATES
PETITION FOR A WRIT OF CERTIORARI

I, Petitioner Rahul Singh, respectfully petition for a writ of certiorari to review the judgment below.

OPINIONS BELOW

The unpublished opinion of the United States Court of Appeals for the Ninth Circuit is given in the appendix, i.e., App. 1a.

JURISDICTION

The judgment of the Court of Appeals for the Ninth Circuit was entered on August 19, 2009. See App. 1a. My timely petition for rehearing en banc was filed September 1, 2009 and denied on December 14, 2009. See App. 4a. The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATEMENT

Federally funded university terminated my employment in retaliation for opposing discrimination prohibited by California anti-discrimination laws in addition to federal Title VI and Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 1981 and federal Title IX of the Education Amendments of 1972. [Retaliation for my opposing gender discrimination against a female applicant who had applied for a position at my federally funded university. I also faced retaliation for wanting equal rights as whites. Whites were granted early tenure and promotion even though the granting was without enthusiasm. Whistle-blower officer on June 29, 2005, stated under oath that I was the top candidate in the college of engineering.]

Affluent University defendants unlawfully destroyed all discrimination case files and records and California Court decided I owe these white supremacists roughly 5000.00 dollars. University defendants engaged with state judges and my then-attorneys in a conspiracy prohibited by federal 42 U.S.C. § 1981, 42 U S.C. § 1983, and 42 U.S.C. § 1985 to defeat justice and civil rights.

After that, the district court and the Ninth Circuit refuse to adjudicate federal civil rights claims of colored citizens of the United States, refuse to give colored citizens equal rights as whites, refuse to obey federal Civil Rights Acts and authorities of this court, refuse to oppose discrimination in employment by doing a merit analysis, refuse to fulfill their obligation to review state court adjudications and adjudicate federal claims to fully protect federal rights under federal Title VI, Title VII, Title IX, 42 U.S.C. § 1981, § 1983 and § 1985.

The federal court has an obligation to give me equal rights as whites, and reinstate me, an American, the recipient of College of Engineering Outstanding Teaching Award with tenure and promotion in tune with **a)** my Department, **b)** my College, **c)** my University Promotions, Tenure and Review Panel, **d)** my *Employment Contract* and **e)** *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 147 (2000). Not a difficult merit analysis (perhaps the most meritorious claim in "Title VII" history). Were it not for conspiring state judges, this would have happened in state court at the August 12, 2005 summary judgment, except I faced a high tech lynching.

The federal court has an obligation to colored citizens to provide Title VI, VII, IX, 42 U.S.C. § 1981,

42 U.S C. § 1983 and 42 U.S.C. § 1985 relief in tune with *Pollard v. E. I. Du Pont De Nemours & Co.*, 532 U.S. 843, (2001) and *Pollard v. E. I. Du Pont De Nemours & Co.*, 412 F 3d 657, (2005).

To summarize, I joined San Diego State University (SDSU) in August of 1998. SDSU is part of the California State University (CSU).

I at all times competently performed my duties and obligations at SDSU, leading to research on the cutting edge of technology and the College of Engineering Outstanding Teacher Award.

My complaint to University's Equal Opportunity Specialist Ms Janice M. Taylor regarding gender discrimination against the female applicant was on **April 10, 2003** and the investigation file spanned until at least May 2003. The investigation was quite malevolent. Ms. Taylor was aware that I was facing retaliation. Federally funded University was forced to invite female applicant for an interview for the Pine Chair position. She was the most qualified for the position.

Ms. Taylor's files also included her meeting with Whistle-Blower Officer Dr. Popp and Defendant dean Hayhurst after Dr. Popp felt that accusing the dean of discrimination [in **March 2003**] is a serious allegation. Dr. Popp stated under oath that I was the top candidate in the college of engineering. Whites were granted early tenure and promotion even though the granting was without enthusiasm. The investigation was quite malevolent. Whistle-blower officer Dr. Popp, on June 29, 2005, under oath, (Popp Dep., pgs. 40-41,)

> Q Were you aware of the fact that Dr. Singh was the top candidate in the college, the only one recommended by the college committee for

> tenure and promotion at the time the dean wrote his letter?
>
> MS WESTOVER Compound Ambiguous as to top candidate
>
> THE WITNESS In 2003, yeah, I was I would follow the recommendations of each of the levels of review
>
> BY MR GOLDEN
>
> Q Do you remember making a statement to him that he would burn bridges, or something to that effect, if he turned in the letter as it was?
>
> A I can – I did mention to him that I thought there was some pretty -- I 'm not sure if I used the phrase burning bridges, but I did suggest to him that the language and the accusations in the paragraphs that I indicated to you earlier were serious accusations, and that's why I felt he ought to reconsider Accusing the dean of discrimination is a serious allegation It should not be taken lightly, in my opinion

According to SDSU Office of Diversity & Equity procedures, records were to be kept by the Office of Diversity & Equity for 2 years. Office of Diversity & Equity's, Equal Opportunity Specialist, law graduate Ms. Taylor was fraudulently and dishonestly accused of destroying all her case files, deleting all emails, changing passwords etc. etc. Ms. Taylor quit SDSU in **September 2003**. **March-April 2003 to September 2003 is even less than 1 year.** Ms. Taylor working for the University's Office of Diversity & Equity reported directly to defendants Marlin and Weber. Whistle-blower officer Dr. Popp also reported directly to defendants Marlin and Weber.

Affluent University Defendants unlawfully destroyed all discrimination case files and records and California state court decided I owed these white supremacists roughly 5000.00 dollars. Defendants

engaged with state judges and my then-attorneys in a wicked conspiracy to defeat justice and my civil rights. Exhibit 10 of the Complaint, Doc. No. 1, shows page 3 of **February 2005** federally funded University's REPONSE TO REQUEST FOR DOCUMENTS, SET ONE,

> "**Request for Production No. 4:**
>
> All documents evidencing any and all cases or investigations involving Equal Opportunity Specialist, Janice Taylor, regardless of the significance of her participation
>
> **Response to Request for Production No. 4:**
>
> Objection Seeks documents that are inadmissible, irrelevant, and not reasonably calculated to lead to discovery of admissible evidence. Violates constitutional privacy rights of persons involved in investigations Unduly burdensome Constitutes unwarranted annoyance, embarrassment, and oppression Subject to and without waiving these objections, CSU responds as follows The only relevant investigation materials would be those involving the Pine Chair Search However, when Ms Taylor left her employment at SDSU, she apparently took with her or otherwise disposed of all her case files, and left no documentation at SDSU Thus, despite a diligent search and reasonable inquiry, CSU is unable to comply with this request, since the documents are no longer in CSU's possession, custody, or control.
>
> **Request for Production No. 5:**
>
> All documents that evidence the current contact information for Janice Taylor
>
> **Response to Request for Production No. 5**
>
> Objection Invades personal privacy rights of Janice Taylor in her personal file documents. Should have been propounded as an interrogatory Subject to and without waiving these objections, CSU responds as follows· Plaintiff is not entitled to documents from

> Janice Taylor's personnel file Janice Taylor's last known address and telephone number are 11837 La Colina Road, San Diego, CA 92131; (858) 566-3244 "

Exhibit 11 of Complaint, Doc. No. 1, shows page 7 of **February 2005** CSU'S REPONSE TO REQUEST FOR DOCUMENTS, SET ONE,

> "**Request for Production No. 16:**
>
> All documents regarding or referring to any review or investigation of Plaintiff's Claims
>
> **Response to Request for Production No. 16:**
>
> Objection Seeks documents protected from disclosure by the attorney client privilege and attorney work product doctrine (including the files of CSU's Office of General Counsel, which has investigated Plaintiff's claims in the course of the governmental claim and litigation) Subject to and without waiving these objections, CSU responds as follows The only relevant non-privileged investigation materials would be those involving the Pine Chair search However, when Janice Taylor left her employment at SDSU, she apparently took with her or otherwise disposed of all her case files, and left no documentation at SDSU Thus, despite a diligent search and reasonable inquiry, CSU is unable to comply with this request, since the documents are no longer in CSU's possession, custody, or control "

Were it not for conspiring state judges, impairment of federal rights under color of state law, the case would have been over at the August 12, 2005 summary judgment in state court. I, the recipient of the College of Engineering Outstanding Teacher award would have been reinstated with tenure and promotion at that time, in tune with **a)** my Department, **b)** my College, **c)** my University Promotions, Tenure and Review Panel, **d)** my *Employment Contract*, and **e)** *Reeves v. Sanderson*

Plumbing Products, Inc., 530 U S. 133 (2000) at page 147,

> " it is *permissible* for the trier of fact to infer the ultimate fact of discrimination from the falsity of the employer's explanation
> In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose "

I was recommended for *both* tenure and promotion by my Department, my College and my University's Promotions and Tenure Review Panel, (Exhibit 3 of Complaint),

> "March 22, 2004
>
> Professor Rahul Singh
> Department of Electrical and Computer Engineering
> College of Engineering
>
> Dear Professor Singh
>
> The University Promotions and Tenure Review Panel has completed its review of your PDS and One-of-a-kind file for tenure and promotion to Associate Professor We are pleased to inform you that we recommend your promotion to the rank of Associate Professor with the awarding of tenure
>
> We believe promotion to Associate Professor to be the University's express recognition of the following. first, that one is an effective teacher, second, that one has contributed significantly to the scholarship in one's field, and finally, that one has readily served the University and community beyond the classroom.
>
> Tenure is the University's express recognition that one's accomplishments in all three areas of professional involvement assure reasonable promise of continued, significant contribution to the academy and to the University

> You have the right to submit a rebuttal statement or a response in writing to this recommendation If you choose to do so, it should be addressed to the Panel and must be received by the Office of Faculty Affairs (CH-3310) no later than march 29, 2004
>
> As your peers and colleagues, we congratulate you on your accomplishments and wish you continued professional success
>
> Sincerely,
>
> University Promotions and Tenure Review Panel (2003-2004)
>
> s/ Terry Cronan
>
> Terry Cronan, Chair — Jay Harris
> Peter Anderson — Brian Loveman
> Nadine Bezuk — Gene Whittenburg
> Sergio Elizondo — Winnie Willis "

According to my contract, defendant and President Stephen Weber needed compelling reasons to terminate me against the wishes of a well informed 8 member University Promotions and Tenure Review Panel, (Exhibit 2 of Complaint),

> "If this final decision is for non-reappointment or reappointment for a terminal year, the President's written communication shall include a detailed statement of the compelling reasons for differing with the Panel's recommendation"

Whites were granted early tenure and promotion even though the granting was without enthusiasm. Instead of assisting and conniving at discrimination prohibited by 42 U.S.C. § 1981, Title VI, Title VII, Title IX, instead of assisting and conniving at crime, fraud and conspiracy, federally funded defendant Weber should have terminated defendants Marlin and Hayhurst. Defendant Weber is also in charge of SDSU's Office of Diversity & Equity. Provost Marlin was aware that Dean Hayhurst had received a vote

of no confidence from the faculty at the University of South Alabama prior to hiring him. Despite knowing this Provost Marlin selected him out of five candidates, including a female and a part Hispanic. Provost Marlin at pg 45 of her June 30, 2005 deposition,

> "Q Were you aware at the time you hired him that he had been given a vote of no confidence at South Alabama University?
>
> Yes"

At the end of April 2004, Dean Hayhurst and Provost Marlin exchanged sham emails regarding my performance. Oddly Provost Marlin did not correct Dean Hayhurst with regards to nonsense written by him in his email regarding my performance. Provost Marlin boasts of being a thorough and independent reviewer. Oddly Provost Marlin did not write Dean Hayhurst back as to explain what he meant that my teaching evaluations are nothing special? Provost Marlin had my teaching evaluations right in front of her, where students wrote, (Exhibit 38 of Complaint),

> "Best Lecturer/Teacher I've had at SDSU A pleasure to attend class Learned a lot"
>
> "The lectures were very clear, organized and the teacher's ability to make the class interesting was noticeable. Dr. Singh its been my real great honor to be your student and I wish you all the best of luck in your life. You have taught me a lot and has been one of the only teachers whom I felt cares about teaching his students and guide them in a positive way (direct) Thank you so very much for everything you have done live your life happily."
>
> "Dr Singh you are a great instructor Honestly you are the only instructor I actually learned a lot from you Thank you for everything (Lakers will repeat for the 4th time) Good Luck"

"Singh is in the top 2 professors that I have had in 5 years at this school Good teaching style, Mellow "

"I have never had an instructor willing to spend more time helping students "

"Dr. Singh was always available and helpful, I learned more in this class than any other class "

"Thanks for being very helpful during office hours I learned a lot though you challenged my/our abilities and knowledge Good luck and see you around Good Job !"

"One of the best teacher at SDSU "

REASONS FOR GRANTING THE PETITION

This court has an obligation to give colored citizens equal rights as whites, an obligation to grant the petition to review state court adjudications and adjudicate federal claims anew or otherwise, to fully protect our federal civil rights. This court also has an obligation to mandate lower federal courts to review state court adjudications and adjudicate federal rights claims anew or otherwise, to fully protect our federal rights under Title VI and VII of the Civil Rights Act of 1964, Title IX of the Education Amendments of 1972 and 42 U.S.C. § 1981.

The district court, (November 13, 2007 Order, Doc. 8 of district court docket, page 2, line 24),

> "On August 14, 2007, Plaintiff filed the instant action with this Court alleging misconduct by the moving Defendants, perpetrated during the litigation of *Singh I* and *Singh II* ("Complaint," Doc 1) "

The district court on November 13, 2007 dismissed my claims against defendant State judges Alex McDonald, Cynthia Aaron, James McIntyre, Patricia Cowett and Richard Strauss as they enjoy immunity (Doc. 8 of district court docket, page 3, line 24),

> "Plaintiff, citing *Beard v Udall*, 648 F 2d 1264 (9th Cir 1981), asserts judicial immunity does not apply "if a judge connives with one of the parties to predetermine the outcome of a judicial proceeding" (Opp. at 6) *Beard*, however, has been overruled Sitting *en banc*, the Ninth Circuit held "allegations that a conspiracy produced a certain decision should no more pierce the actor's immunity than allegations of bad faith, personal interest or outright malevolence" *Ashelman v. Pope*, 793 F 2d 1072, 1077-78 (9th Cir 1986) (*en banc*)"

The district court refused to protect my rights under federal Title VI, Title VII, Title IX and 42 U.S.C. § 1981 (Doc. 27 of district court docket, pg. 3, line 21),

> "As with his state court complaints, Plaintiff seeks in the present action reinstatement, compensatory and punitive damages, and equitable relief (Compl at 49). His prayer for relief arises out of the same facts alleged in his state court complaints This is apparent from the face of the Complaint, which contains lengthy quotations from Plaintiff's state court pleadings As these claims already have been adjudicated, the doctrine of *res judicata* prohibits this Court from adjudicating them anew
>
> Plaintiff alternatively argues this Court may "render review" of the state court decisions because his petitions for review in the California and United States Supreme Courts have been denied (Compl ¶ 82-83) The *Rooker-Feldman* doctrine, however, specifically prohibits this Court from reviewing the state court's adjudication of those claims Accordingly, the claims against the University Defendants are dismissed with prejudice"

The district court (Doc. 27 of district court docket, pg. 4, line 19),

> "While Plaintiff's Title VII claims arise out of the University's alleged unlawful termination of Plaintiff, the attorney-fraud claims arise out of the alleged mishandling of the subsequent lawsuit [2] The state law claims therefore do not form part of the same case or controversy as the federal Title VII claims Since the

> Court lacks subject matter jurisdiction over the attorney-fraud claims, they are dismissed with prejudice"

The district court and the Ninth Circuit refuse to adjudicate federal claims filed by colored citizens. The court of appeals of the Ninth Circuit,

> "Rahul Singh appeals pro se from the district court's judgment in his civil rights action alleging that he was denied tenure and a promotion in retaliation for complaining about gender discrimination

Yes, one of my claims is that I was denied tenure and a promotion in retaliation for opposing gender discrimination against a female applicant who had applied for a position at my federally funded University. In federal court, this claim falls under Title VII of the Civil Rights Act of 1964. Additionally, by the authority of *Jackson v. Birmingham Board of Education*, 544 U.S. 167 (2005), this claim also falls under Title IX of the Education Amendments of 1972. And one of my claims is that my federal rights under Title VI, Title VII, Title IX, 42 U.S.C. § 1981 and 544 U.S. 167 were impaired under color of state law, i.e., state judges conspired with white supremacists to deprive me of my federal rights.

I. This court, at the very least, has an obligation to give colored citizens equal rights as whites, and has an *obligation* as set forth by Title VII of Civil Rights Acts of 1964 *to grant the petition* to mandate lower federal courts to review state court adjudications and adjudicate federal rights claims to fully protect federal rights under federal Title VII.

On June 4, 1964, Senator Humphrey (D., MN.) presented to the Senate a detailed explanation of the

changes made in the House bill (H.R. 7152) by Senate substitute amendment No. 656, the compromise worked out in a series of conferences among Senate leaders and Justice Department officials. (Senate, 6-4-64, pp. 12721-12725). Senator Humphrey concluded,

> "We sought merely to guarantee that these States and other States which may establish such programs will be given every opportunity to employ their expertise and experience **without premature** interference by the Federal Government In the opinion of the senator from Minnesota, this is good sense and good legislation We sought to improve this bill, and I believe we did
> At the same time, we recognized the absolute necessity of providing the Federal Government with authority to act in instances where States and localities did not choose to exercise these opportunities to solve the problem of civil rights in a voluntary and localized manner **The basic rights protected by H.R. 7152 are rights which accrue to citizens of the United States; the Federal Government has the clear obligation to see that these rights are fully protected. In instances where States are unable or unwilling to provide this protection, the Federal Government must have the authority to act.** This is the formula which we sought to implement in the substitute package, I believe we were successful"
>
> "First, substantive changes which provided ample opportunity for State action, **yet preserved the ultimate authority of the Federal Government to protect the civil rights of the citizens of this country**" "I say, most respectfully that I believe we have presented a reasonable, workable, acceptable piece of legislation If enacted, it can provide the framework of law within each men and women of goodwill and reason, dedicated to the preservation of the dignity of human rights, can meet the difficult problems of civil rights, or, should I say, **adjudicate civil wrongs.**" (boldfacing added)]

Prior to June 4, 1964, Senator Dirksen (R. IL.) had submitted a memorandum questioning federal Title VII, and Senator Clark (D. PA.) had responded on April 8, 1964, (Senate, 4-8-64, pp. 7215-7218)

> Senator Dirksen "What a layering upon layer of enforcement What if the court orders differ in their terms or requirements? There is no assurance that they will be identical Shall we have the Federal forces of justice pulling on the one arm and the State forces of justice tugging on the other? "
>
> Senator Clark· "In any event, there cannot be contrary and conflicting orders from State and Federal agencies, because of the doctrine of Federal supremacy "

II. This court has an obligation to give colored citizens equal rights as whites by providing us with the protection of the authority of *Haddle v. Garrison* (1998) 525 U.S. 121, 126-127:

> "Petitioner did bring a claim for tortious interference with his employment relation against respondents in Georgia state court, but that claim was dismissed on summary judgment and the dismissal affirmed on appeal The ultimate course of petitioner's state-law claim, however, has no bearing on whether he can state a claim for damages under § 1985(2) in federal court "

III. This court has an obligation to give colored citizens equal rights as whites by providing us with the protection of 42 U.S.C. § 1981, again by reviewing state court adjudications and adjudicating 42 U.S.C. § 1981 claims, anew or otherwise, to fully protect our 42 U.S.C. § 1981 rights. At the very least, this court has an obligation to grant this petition to mandate lower federal courts to adjudicate 42 U.S.C. § 1981 claims filed in federal court.

Colored citizens should have equal rights as whites to employment contracts as well as in litigation. Whites were granted early tenure and promotion even though the granting was without enthusiasm. Whistle-blower officer stated under oath that I was the top candidate in the college of engineering and that accusing the Dean of discrimination was a serious allegation. 42 U.S.C. § 1981 rights are federally protected against impairment. State judges may enjoy immunity from conspiring with white supremacists. However these judges still act under color of State law. (See 449 U.S. 24, (1980): "A state judge can be found criminally liable under 242 although that judge may be immune from damages under 1983. See *Imbler v. Pachtman*, 424 U.S. 409, 429 (1976); *O'Shea v. Littleton*, 414 U.S. 488, 503 (1974). In either case, the judge has acted under color of state law.")

> § 1981 Equal rights under the law
> (a) Statement of equal rights
> All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other
> (b) "Make and enforce contracts" defined
> For purposes of this section, the term "make and enforce contracts" includes the making, performance, modification, and termination of contracts, and the enjoyment of all benefits, privileges, terms, and conditions of the contractual relationship.
> (c) Protection against impairment
> The rights protected by this section are protected against impairment by nongovernmental discrimination and impairment under color of State law

> § 1981a Damages in cases of intentional discrimination in employment
>
> (a) Right of recovery
> (1) Civil rights
> In an action brought by a complaining party under section 706 or 717 of the Civil Rights Act of 1964 [42 U S C 2000e–5, 2000e–16] against a respondent who engaged in unlawful intentional discrimination (not an employment practice that is unlawful because of its disparate impact) prohibited under section 703, 704, or 717 of the Act [42 U S.C 2000e–2, 2000e–3, 2000e–16], and provided that the complaining party cannot recover under section 1981 of this title, the complaining party may recover compensatory and punitive damages as allowed in subsection (b) of this section, in addition to any relief authorized by section 706(g) of the Civil Rights Act of 1964, from the respondent

There is no formula with which to assess state courts, for example, California judges conspired with white supremacists and awarded them roughly 5000 dollars after they destroy discrimination case files and records. States were not given jurisdiction to entertain federal Title VI, VII, IX, and 42 U.S.C. § 1981. Congress intended there to be a federal layer of protection, a layer upon layer.

The district court and the Ninth Circuit refuse to obey federal Civil Rights Acts including Title VI and VII of Civil Rights Act of 1964, 42 U.S.C. § 1981, and Title IX of the Education Amendments of 1972. These Acts allow unfettered access to federal court for full protection of civil rights accrued under federal Title VI, VII, IX and 42 U.S.C. § 1981. What rules at the end of the day is full federal protection of these rights.

IV. This court has an obligation to give colored citizens equal rights as whites by providing us with the protection of the

authority of *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000) at page 147,

> " it is *permissible* for the trier of fact to infer the ultimate fact of discrimination from the falsity of the employer's explanation Specifically, we stated
>
> "The factfinder's disbelief of the reasons put forward by the defendant (particularly if disbelief is accompanied by a suspicion of mendacity) may, together with the elements of the prima facie case, suffice to show intentional discrimination Thus, rejection of the defendant's proffered reasons will *permit* the trier of fact to infer the ultimate fact of intentional discrimination " *Id*, at 511
>
> Proof that the defendant's explanation is unworthy of credence is simply one form of circumstantial evidence that is probative of intentional discrimination, and it may be quite persuasive See *id*, at 517 ("[P]roving the employer's reason false becomes part of (and often considerably assists) the greater enterprise of proving that the real reason was intentional discrimination") In appropriate circumstances, the trier of fact can reasonably infer from the falsity of the explanation that the employer is dissembling to cover up a discriminatory purpose Such an inference is consistent with the general principle of evidence law that the factfinder is entitled to consider a party's dishonesty about a material fact as "affirmative evidence of guilt." *Wright* v *West*, *505* U S 277, 296 (1992)."

Affluent University Defendants unlawfully destroyed all discrimination case files and records and California state court decided I owed these white supremacists roughly 5000.00 dollars. Were it not for conspiring state judges, impairment of federal rights under color of state law, the case would have been over at the August 12, 2005 summary judgment in state court. I, the recipient of the College of Engineering Outstanding Teacher award would have been reinstated with tenure and promotion at that

time, in tune with **a)** my Department, **b)** my College, **c)** my University Promotions, Tenure and Review Panel, **d)** my *Employment Contract*, and **e)** *Reeves v. Sanderson Plumbing Products, Inc.*, 530 U.S. 133 (2000).

V. This court has an obligation to give colored citizens equal rights as whites by providing us with the protection of the authority of *Jackson v. Birmingham Board of Education*, 544 U.S. 167, (2005),

> "Title IX prohibits sex discrimination by recipients of federal education funding The statute provides that "[n]o person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance " 20 U S C §1681(a). More than 25 years ago, in *Cannon* v *University of Chicago*, 441 U S 677, 690-693 (1979), we held that Title IX implies a private right of action to enforce its prohibition on intentional sex discrimination In subsequent cases, we have defined the contours of that right of action In *Franklin* v *Gwinnett County Public Schools*, 503 U S 60 (1992), we held that it authorizes private parties to seek monetary damages for intentional violations of Title IX We have also held that the private right of action encompasses intentional sex discrimination in the form of a recipient's deliberate indifference to a teacher's sexual harassment of a student, *Gebser* v *Lago Vista Independent School Dist*., 524 U S 274, 290-291 (1998), or to sexual harassment of a student by another student, *Davis* v *Monroe County Bd. of Ed*., 526 U S 629, 642 (1999)
>
> In all of these cases, we relied on the text of Title IX, which, subject to a list of narrow exceptions not at issue here, broadly prohibits a funding recipient from subjecting any person to "discrimination" "on the basis of sex " 20 U S C §1681 Retaliation against a person because that person has complained of sex discrimination is another form of intentional sex

> discrimination encompassed by Title IX's private cause of action Retaliation is, by definition, an intentional act It is a form of "discrimination" because the complainant is being subjected to differential treatment See generally *Olmstead* v *L. C*, 527 U S 581, 614 (1999) (*Kennedy*, J , concurring in judgment) (the "normal definition of discrimination" is "differential treatment"), see also *Newport News Shipbuilding & Dry Dock Co* v *EEOC*, 462 U S 669, 682, n 22 (1983) (discrimination means "less favorable" treatment) Moreover, retaliation is discrimination "on the basis of sex" because it is an intentional response to the nature of the complaint an allegation of sex discrimination We conclude that when a funding recipient retaliates against a person *because* he complains of sex discrimination, this constitutes intentional "discrimination" "on the basis of sex," in violation of Title IX "

The federal courts below do not allow colored citizens the protection of the authority of *Jackson v. Birmingham Board of Education*, 544 U.S. 167, (2005).

VI. This court has an obligation to give colored citizens equal rights as whites by providing us with the protection of the authority of *Dennis v. Sparks*, 449 U.S. 24 (1980),

> "Held:
> The action against the private parties accused of conspiring with the judge is not subject to dismissal. Private persons, jointly engaged with state officials in a challenged action, are acting "under color" of law for purposes of 1983 actions And the judge's immunity from damages liability for an official act that was allegedly the product of a corrupt conspiracy involving bribery of the judge does not change the character of his action or that of his co-conspirators Historically at common law, judicial immunity does not insulate from damages liability those private persons who corruptly conspire with a judge Nor has the doctrine of judicial

> immunity been considered historically as excusing a judge from responding as a witness when his co-conspirators are sued, even though a charge of conspiracy and judicial corruption will be aired and decided Gravel v United States, 408 U S 606, distinguished The potential harm to the public from denying immunity to co-conspirators if the factfinder mistakenly upholds a charge of a corrupt conspiracy is outweighed by the benefits of providing a remedy against those private persons who participate in subverting the judicial process and in so doing inflict injury on other persons Pp 27-32 604 F 2d 976, affirmed "

Judges are immune from conspiring and malevolence. Perhaps California Attorney General Edmund G. Brown and his Deputy Jodi L. Cleesattle can also use "immunity" as a shield. However, the remaining co-conspirators/Defendants are still liable in an action at law, suit in equity, or other proper proceeding for redress; such proceeding to be prosecuted in the several District or Circuit Courts of the United States, with and subject to the same rights of appeal, review upon error and other remedies provided in like cases in such courts, under the provisions of the act of the 9th of April, 1866, entitled "An Act to protect all persons in the United States in their civil rights, and to furnish the means of their vindication," and the other remedial laws of the United states which are in their nature applicable in such cases. See Civil Rights Act of 1871.

The district court and the Ninth Circuit as a whole, believes that federal Civil Rights Acts, *Dennis v. Sparks*, 449 U.S. 24 (1980) and other authorities of this court are not applicable to colored citizens. The Ninth Circuit violated the authority of this court by not only dismissing the case against defendant State

judges Alex McDonald, Cynthia Aaron, James McIntyre, Patricia Cowett and Richard Strauss but also dismissing the case against co-conspirators University defendants and my then-attorneys without doing a merit analysis, without reviewing state court adjudications, and without adjudicating federal claims.

VII. This court has an obligation to give colored citizens equal rights as whites by providing us with the protection of the authority of this court at *Bell v. Hood*, 327 U.S. 678 681 (1946),

> "For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits, and not for a dismissal for want of jurisdiction Whether the complaint states a cause of action on which relief could be granted is a question of law, and, just as issues of fact, it must be decided after, and not before, the court has assumed jurisdiction over the controversy If the court does later exercise its jurisdiction to determine that the allegations in the complaint do not state a ground for relief, then dismissal of the case would be on the merits, not for want of jurisdiction "

This court has an obligation to give colored citizens equal rights as whites by providing us with the protection of the authority of *Jackson v. Birmingham Board of Education*, 544 U.S. 167, (2005)?

> "Because Jackson's Title IX claim was dismissed under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted, "we must assume the truth of the material facts as alleged in the complaint " *Summit Health, Ltd* v *Pinhas*, 500 U S 322, 325 (1991)
>
> At this stage of the proceedings, "[t]he issue is not whether a plaintiff will ultimately prevail but whether the claimant is entitled to offer evidence to support the

> claims." *Scheuer* v *Rhodes*, 416 U S 232, 236 (1974) Accordingly, the judgment of the Court of Appeals for the Eleventh Circuit is reversed, and the case is remanded for further proceedings consistent with this opinion "

The Ninth Circuit dismissed the entire case under Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief can be granted. It did so without doing a merit analysis, with reviewing state court adjudications and without adjudicating federal claims to fully protect rights under federal Title VI, Title VII, Title IX and 42 U.S.C 42 U.S.C. § 1981.

VIII. This court has an obligation to give colored citizens equal rights as whites by providing us with the protection of the authority of *Hazel-Atlas Glass Co. v. Hartford-Empire Co.*, 322 U.S. 238 (1944).

State judges and defendants also perpetrated fraud upon the court in my intentional employment discrimination case. Colored citizens should also be federally protected by the doctrine of *Hazel-Atlas* echoed in *Chewning v. Ford Motor Co.*, 354 S.C. 72, 83-84, (2003),

> " We note because fraud upon the court is an affront to the administration of justice, a litigant who has been defrauded need not establish prejudice Hazel-Atlas Glass Co v Hartford-Empire Co , supra; Dixon v. Comm'n of Internal Revenue, 2003 WL 1216290 (9th Cir 2003) (" the perpetrator of the fraud [upon the court] should not be allowed to dispute the effectiveness of the fraud after the fact ") "

Will this court please let colored citizens file suit in equity in federal court? *Hazel-Atlas*, at 259: extrinsic fraud, fraud upon the court allow one to file suit in equity in the federal court which rendered the

judgment or in a federal court other than the court, federal or state, which rendered it.

IX. This court has an obligation to give colored citizens equal rights as whites by providing us with the protection of The Civil Rights Remedies Equalization Act of 1986.

The district court and the ninth circuit do not allow colored citizens to file in federal court their Title VI and Title IX claims. The Civil Rights Remedies Equalization Act of 1986 at 42 U.S.C. 2000d7 provides for remedies both at law and in equity in federal court,

> "(a) General provision
> (1) A State shall not be immune under the Eleventh Amendment of the Constitution of the United States from suit in Federal court for a violation of section 504 of the Rehabilitation Act of 1973 [29 U S C 794], title IX of the Education Amendments of 1972 [20 U.S.C. 1681 et seq], the Age Discrimination Act of 1975 [42 U S C 6101 et seq], title VI of the Civil Rights Act of 1964 [42 U S C 2000d et seq], or the provisions of any other Federal statute prohibiting discrimination by recipients of Federal financial assistance
>
> (2) In a suit against a State for a violation of a statute referred to in paragraph (1), remedies (including remedies both at law and in equity) are available for such a violation to the same extent as such remedies are available for such a violation in the suit against any public or private entity other than a State
>
> (b) Effective date
> The provisions of subsection (a) of this section shall take effect with respect to violations that occur in whole or in part after October 21, 1986 "

X. This court has an obligation to give colored citizens equal rights as whites by

providing us with the protection of 42 U.S.C. § 1985.

> "42 U S C. § 1985 Conspiracy to interfere with civil rights
>
> if two or more persons conspire for the purpose of impeding, hindering, obstructing, or defeating, in any manner, the due course of justice in any State or Territory, with intent to deny to any citizen the equal protection of the laws, or to injure him or his property for lawfully enforcing, or attempting to enforce, the right of any person, or class of persons, to the equal protection of the laws, "

I spent roughly 20,000.00 dollars on Attorneys in appealing the decision of the first court. One Attorney remarked that he was afraid of retaliation from State Judge Patricia Cowett but he did feel my pain. Another Attorney remarked to me that California Court will not blow-the-whistle on affluent law firms etc. etc. *Republican Party of Minnesota Et Al. v. White, Chairperson, Minnesota Board of Judicial Standards, et al.*, 536 U.S. 765, 790, (2001),

> "Barnhizer, "On the Make" Campaign Funding and the Corrupting of the American Judiciary, 50 Cath U L Rev 361, 379 (2001) (relating anecdotes of lawyers who felt that their contributions to judicial campaigns affected their chance of success in court) Despite these significant problems, 39 States currently employ some form of judicial elections for their appellate courts, general jurisdiction trial courts, or both "

Catholic University Law Review (Cath. U. L. Rev.), Vol. 50 (2001), pg. 378,

> "This lawyer, who practices in Southern California, said that a local prosecutor's office decided to run several of their district attorneys against judges whose rulings they did not like Some of the lawyers in the area decided to create a committee to raise funds for the endangered judges and he contributed funds and his name to the committee. He related how in the midst of

> the heated election campaign, he was beginning a trial before a judge whose judicial friends and colleagues the lawyers committee was supporting At the beginning of the trial, the judge's bailiff entered the courtroom with a paper in his hand and then passed it to the judge The judge looked down at the paper, looked up at the opposing lawyer (who was not on the lawyers' committee) without saying a word or changing expression and then looked backed down at the paper A few seconds later he looked up at my lawyer friend and smiled at him From that point and throughout the trial the contributing lawyer "could do no wrong" and received an unbroken string of favorable rulings "

Cath. U. L. Rev., Vol. 50 (2001) at pg. 368:

> "The ABA's Model Rule of Professional Conduct 3 5, "Impartiality and Decorum of the Tribunal", mandates that "A lawyer shall not (a) seek to influence a judge ... by means prohibited by law "[17] The irony is obvious in the language itself, which on its face permits lawyers to seek to influence a judge by means *allowed* by law "

Affluent University Defendants destroyed all discrimination case files and records and California Court decided that I owed these white supremacists roughly 5000.00 dollars. State judges, University defendants and my then-attorneys engaged in a conspiracy prohibited by federal civil rights acts, 42 U.S.C. § 1981, 42 U.S.C § 1983 and 42 U.S.C. § 1985.

Attorney and defendant Westover's declaration submitted October 10, 2005 (Exhibit 14 of Complaint),

" DECLARATION OF SUSAN WESTOVER

I, Susan Westover, declare as follows

1. I am an attorney licensed to practice in the State of California and I am University Counsel with the Office of General Counsel for the California State University In that capacity I represent defendant Board of Trustees

of the California State University If called upon to testify, I could and would competently testify to the following matters, of which I have personal knowledge

2 In his motion in limine, plaintiff claims that his lawyer may have tampered with the evidence by taking plaintiff's "red SDSU faculty recruitment and hiring procedures handbook" and swapping it for another version Since 1999, there have only been two versions of that handbook The one that governed the Pine Chair search involved in this case is the version issued in 1999 (and the one included in the trial exhibits as Exhibit No 170) While the handbook was recently updated in 2004, that version is irrelevant here, since this search took place in 2003 In any event, I have had no exchanges of information with Joel Golden regarding this particular document, and find it hard to believe that Mr Golden somehow got an extra copy of a different version of the red handbook and switched it for the one that plaintiff originally had He certainly never got any red handbooks from me

3. In his motion, plaintiff also claims that his former counsel provided me with a list of questions to be asked of University witnesses I have no idea what Dr. Singh is talking about, as I have never received from Mr. Golden any lists of questions for witnesses

4. Finally, in his motion, plaintiff claims that the document entitled "SDSU Office of Diversity & Equity Procedures for Faculty Recruitment and Hiring" (July 30, 1999) (Trial Exhibit No 170) was not exchanged during discovery Plaintiff never asked for faculty recruitment and hiring policies or procedures during the discovery process A true and correct of his only request for production of documents to the University is attached as **Exhibit A.** Notably absent is any request for such a document Regardless, plaintiff knew of the existence of the document since he actually produced that document to the University in response its request for production to him

I declare under penalty of perjury under the laws of the State of California that the foregoing

> is true and correct Executed on October 10, 2005, at Long Beach, California
>
> s/ Susan Westover
>
> Susan Westover"

Trial Exhibit No. 170 was never exchanged because of unlawful conspiracy and fraud upon the court. This court can easily ascertain the truth and unearth the conspiracy by taking note of what Defendant Westover wrote in paragraph 4 of her declaration: "Regardless, plaintiff knew of the existence of the document since he actually produced that document to the University in response its request for production to him." During briefing or even prior to accepting the defendants attorneys certificate of good standing, this court could ask defendants attorney or ask Attorney Susan Westover as to: WHERE IS THAT DOCUMENT SUPPOSEDLY PRODUCED BY PLANTIFF TO THE UNIVERSITY? SHOW IT TO US. ATTACH IT TO THE CERTIFICATE OF GOOD STANDING.

Attorneys Joel Golden and Jeremy Golden had fraudulently abandoned me at Summary Judgment. I was also discouraged from including an affidavit to defeat Summary Judgment. I fired Attorneys Joel Golden and Jeremy Golden. Afterwards on September 15, 2005, my material was returned to me except that Attorneys Joel and Jeremy Golden in conspiracy with defendants Reed, Hayhurst, Marlin, Weber and Westover kept/stole my red colored official SDSU Handbook regarding Office of Diversity & Equity procedures which stated that *records were to be kept by the Office of Diversity and Equity (ODE) for 2 years.* Attorney Golden had not exchanged this document in discovery despite my requests. Attorney Golden had deceitfully reasoned that he did not want

Defendant to know that they had this document and that he was *concealing* it from Defendant for possible impeachment at trial. Defendants Reed, Hayhurst, Marlin, Weber, Westover in conspiracy with my Attorneys Jeremy Golden and Joel C. Golden had been conniving at my defeat, conceiving and fabricating fraudulent evidence, i.e., a fraudulent red handbook stating that search records should be kept for 1 year. My Attorneys removed my distinct sticky markers from my red Handbook and placed them in the fraudulently fabricated Handbook.

On September 15, 2005, my material returned to me contained the fraudulently fabricated red Handbook. Defendants had known that I planned on walking in to court with my red handbook as key evidence. Ku Klux Klannish conduct, crime, fraud and conspiracy by defendants Reed, Hayhurst, Marlin, Weber, Westover, Jeremy Golden and Joel C. Golden to impede, hinder, obstruct and defeat justice also makes these seven defendants liable in federal court under 42 U.S.C. § 1985. Judges of course, enjoy immunity. The federal court has an obligation to adjudicate my 42 U.S.C. § 1985 claims in addition to federal Title VI, Title VII, Title IX, 42 U.S.C. § 1981 and 42 U.S.C. § 1983 claims.

XI. This court has an obligation to permit colored citizens to include state court pleadings in federal complaint to show that affluent white supremacist defendants conspired with state judges to defeat justice and civil rights.

Are lengthy quotations from state court pleadings not needed in support of my federal claims stated on page 1 of my federal Complaint as shown here on the next page?

"UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAHUL SINGH,

NO 07 CV 1615 DMS BLM

CIVIL RIGHTS COMPLAINT
18 U S C § 242, 42 U S C § 1981,
42 U S C § 1983, 42 U S.C § 1985,
DISCRIMINATION & RETALIATION,
FRAUD UPON THE COURT,
STEALING AND TAMPERING OF
EVIDENCE BY ATTORNEYS

vs

ALEX MCDONALD,
CHARLES REED
CYNTHIA AARON,
DAVID T HAYHURST,
EDWARD G BROWN,
JAMES MCINTYRE,
JEREMY GOLDEN,
JODI L. CLEESATTLE,
JOEL C GOLDEN,
NANCY A MARLIN,
PATRICIA COWETT,
RICHARD STRAUSS,
STEPHEN WEBER,
SUSAN WESTOVER,

EXHIBITS 1 TO 51
IN SUPPORT OF
COMPLAINT ARE
PROVIDED IN
ACCOMPANYING
VOLS 1 TO 4

DEFENDANTS

---"

How else do colored citizens show conspiracies prohibited by 42 U.S.C § 1981, 42 U.S.C. § 1983, 42 U.S.C. § 1985 and other federal Civil Rights Acts? How else do colored citizens show that state judges Alex McDonald, Cynthia Aaron, James McIntyre, Patricia Cowett and Richard Strauss were unwilling to protect my federal civil rights under Title VI, Title VII, Title IX and 42 U.S.C. § 1981? How else do

colored citizens show impairment of federal rights under color of state law?

CONCLUSION

Please fulfill your obligation to oppose discrimination in employment and discrimination by state courts and courts of the United States.

Please fulfill your obligation to grant the petition for a writ of certiorari and summarily reverse the judgment below or, in the alternative, order briefing.

Respectfully submitted.

Rahul Singh,
Petitioner in Pro Per

March 7, 2010

FILED
AUG 19 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RAHUL SINGH,
Plaintiff - Appellant,

No. 08-56131
D.C. No. 3:07-cv-01615-DMS-BLM

v.

CHARLES REED; et al.,
Defendants - Appellees.

MEMORANDUM *

Appeal from the United States District Court
for the Southern District of California
Dana M. Sabraw, District Judge, Presiding
Submitted August 11, 2009 **

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges.

Rahul Singh appeals pro se from the district court's judgment in his civil rights action alleging that he was denied tenure and a promotion in

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* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2). Accordingly, Singh's request for oral argument is denied.

JK/Research

retaliation for complaining about gender discrimination. We have jurisdiction under 28 U.S.C. § 1291. We review de novo. *Mpoyo v. Litton Electro-Optical Sys.*, 430 F.3d 985, 987 (9th Cir. 2005) (res judicata); *Fry v. Melaragno*, 939 F.2d 832, 835 (9th Cir. 1991) (absolute immunity); *Satey v. JPMorgan Chase & Co.*, 521 F.3d 1087, 1090 (9th Cir. 2008) (subject matter jurisdiction). We affirm.

The district court properly dismissed the action against defendants Marlin, Weber, Hayhurst, and Reed based on the doctrine of res judicata. Singh may not relitigate whether these defendants retaliated against him because those claims have already been litigated by the parties and their privies in state court and ultimately decided by the California courts in favor of defendants. *See Singh v. Bd. of Trs. of the Cal. State Univ.*, No. D048076, slip op. at 8-11 (Cal. Ct. App. April 17, 2007); *Singh v. Bd. of Trs. of the Cal. State Univ.*, No. S153042, slip op. at 1 (Cal. July 11, 2007); *see also Kay v. City of Rancho Palos Verdes*, 504 F.3d 803, 808 (9th Cir. 2007) (describing elements of res judicata under California law).

The district court properly dismissed the action against defendant Westover based on the doctrine of absolute immunity. *See Fry*, 939 F.2d at 837 (concluding that absolute immunity applies "to the government attorney's initiation and handling of civil litigation in a state or federal court," and explaining that such immunity is necessary "[w]hether the government attorney is representing the plaintiff or the defendant . . .").

The district court properly dismissed the action against defendants Joel and Jeremy Golden for lack of subject matter jurisdiction. Singh's claims against these defendants, who represented Singh in the state court litigation, do not form "part of the same case or controversy" as the retaliation and termination claims, and Singh has alleged no other basis for subject matter jurisdiction. *See* 28 U.S.C. § 1367(a).

AFFIRMED.

FILED
DEC 14 2009
MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RAHUL SINGH, Plaintiff - Appellant,	No. 08-56131 D.C. No. 3:07-cv-01615-DMS-BLM
v.	Southern District of California, San Diego
CHARLES REED; et al., Defendants - Appellees.	ORDER

Before: KLEINFELD, M. SMITH, and IKUTA, Circuit Judges

The full court has been advised of the petition for rehearing en banc and no judge has requested a vote on whether to rehear the matter en banc. *See* Fed. R. App. P. 35.

Singh's petition for rehearing en banc is denied.

No further filings shall be accepted in this closed case.

JK/Research

Supreme Court, U.S.
FILED

091222 MAR 9 - 2010

OFFICE OF THE CLERK

No

In the

Supreme Court of the United States

RAHUL SINGH,

Petitioner,

v.

CHARLES REED, DAVID T. HAYHURST, JEREMY GOLDEN, JOEL C. GOLDEN, NANCY A. MARLIN, STEPHEN WEBER, SUSAN WESTOVER,

Respondents.

On Petition For Writ Of Certiorari
To The Court Of Appeals For The Ninth Circuit

SUPPLEMENTAL APPENDIX

Rahul Singh
Petitioner in Pro Per
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Case 3:07-cv-01615-DMS-BLM Document 8
Filed 11/13/07

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAHUL SINGH,
Plaintiff,

CASE NO. 07-CV-1615
(DMS-BLM)

vs.

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS

ALEX MCDONALD,
CHARLES REED,
CYNTHIA AARON,
DAVID T. HAYHURST,
EDWARD G. BROWN,
JAMES MCINTYRE,
JEREMY GOLDEN,
JODI L. CLEESATTLE,
JOEL C. GOLDEN,
NANCY A. MARLIN,
PATRICIA COWETT,
RICHARD STRAUSS,
STEPHEN WEBER,
SUSAN WESTOVER,
Defendants.

Pending before the Court are two motions to dismiss. The first motion is brought by Defendants Edmund G. Brown, Jr., the Attorney General of California, and Jodi L. Cleesattle, a Deputy Attorney General ("AG Defendants"). The second motion is brought by Judges Richard Strauss and Patricia Cowett of the Superior Court of California, County of

San Diego; and Justices Alex McDonald, Cynthia Aaron and James McIntyre of the California Court of Appeal, Fourth District, Division One ("Judicial Defendants"). The matter was argued on November 2, 2007, at which time Plaintiff appeared *pro se* and Jodi Cleesattle appeared on behalf of the AG Defendants. The Judicial Defendants submitted their arguments on the briefs. Having carefully reviewed the matter, the Court grants both motions and dismisses the action with prejudice as to these Defendants.

I.
BACKGROUND[1]

On October 13, 2004, Plaintiff filed a lawsuit against the Board of Trustees of the California State University in San Diego Superior Court ("*Singh I*"). Judge Cowett was assigned to the case. Plaintiff alleged he was denied tenure and promotion in his tenure track position at the University in retaliation for complaining about gender discrimination against an applicant in his department. (AG Defendants' Request for Judicial Notice, Ex. A). On October 13, 2005, Plaintiff signed an agreement settling all claims with the University. *(Id.* at Ex. C). Despite Plaintiffs' protestations, on December 23, 2005, Judge Cowett granted the University's motion to enforce that agreement, *(Id.* at Ex. D), and entered judgment. *(Id.* at Exs. F and G).

---

[1] Pursuant to Rule 201 of the Federal Rules of Evidence, the Court takes judicial notice of all records in *Singh I* and *Singh II* submitted by the AG Defendants.

On February 15, 2006, Plaintiff appealed the judgment. *(Id.* at Ex. H). He submitted both an appellate brief and a document entitled, "Appellant Requesting Court Order to Catch Fraud Upon the Court." *(Id.* at Exs. I and J). The latter document was returned unfiled. *(Id.* at Ex. K). Justices McDonald, McIntyre, and Aaron heard the appeal, and on April 17, 2007, the panel affirmed the trial court's judgment. *(Id.* at Ex. L). Plaintiff thereafter filed a petition for rehearing, which was denied *(Id.* at Ex. M), as was his petition for review in the California Supreme Court. *(Id.* at Ex. O).

On February 21, 2007, while his appeal was pending, Plaintiff filed a second action against the Board of Trustees of the California State University, Stephen L. Weber, Nancy A. Marlin, and David T. Hayhurst. ("*Singh II*") *(Id.* at Ex. Q). The second action repeated the allegations of the first, and was assigned to Judge Strauss. On May 23, 2007, the Attorney General's Office associated as co-counsel for the defendants in *Singh II*, *(Id.* at Ex. R), and thereafter moved for judgment on the pleadings. The motion was granted on grounds that the claims were barred by (a) the doctrine of *res judicata*, and (b) the parties' underlying settlement agreement and release. *(Id.* at Exs. S and T).

On August 14, 2007, Plaintiff filed the instant action with this Court alleging misconduct by the moving Defendants, perpetrated during the litigation of *Singh I* and *Singh II*. ("Complaint," Doc. 1). The AG Defendants argue Plaintiff's instant Complaint is deficient as a matter of law because: (1) they are immune from claims arising out actions taken by

them in the course of litigation; and (2) Plaintiff fails to sufficiently allege any wrongdoing. The Judicial Defendants argue dismissal is appropriate because the present action is barred by: (1) the Eleventh Amendment to the United States Constitution; (2) judicial immunity; and (3) the *Rooker-Feldman* doctrine.

II.
DISCUSSION

A Rule 12(b)(6) dismissal is proper where it is apparent a plaintiff cannot prove facts sufficient to support his claim for relief. *Gilligan v. Jamco Development Corp.*, 108 F.3d 246, 284 (9th Cir. 1997). In reviewing the complaint, the court construes allegations of material fact in the light most favorable to the nonmoving party. *Id.*

Attorneys employed by the Attorney General's office are absolutely immune from claims arising out of actions they take while discharging their litigation-related duties. *Bly-Magee v. California*, 236 F.3d 1014, 1018 (9th Cir. 2001); *Yoonessi v. Albany Medical Center*, 352 F. Supp. 2d 1096, 1103 (C.D. Cal. 2005). For example, in *Yoonessi*, where plaintiff's only allegations involved fraudulent statements that defendant purportedly made while representing the Medical Board of California in legal proceedings before two California courts, the deputy attorney general defendant was held to be absolutely immune from plaintiff's suit. 352 F. Supp. 2d at 1103-04. Similarly, judges are absolutely immune from suits for money damages arising out of acts performed in their official capacities. *Mireles v. Waco*,

502 U.S. 9, 9-10 (1991) (per curiam); *Dennis v. Sparks*, 449 U.S 24, 27 (1980). Judicial immunity encompasses injurious legal error, *Cleavinger v. Saxner*, 474 U.S. 193, 199-200 (1985); bad faith and malice, *Mireles*, 502 U.S. at 11; and the commission of grave procedural errors. *In re Castillo*, 297 F.3d 940, 947 (9th Cir. 2002), *citing Stump v. Sparkman*, 435 U.S. 349, 359 (1978).

Plaintiff, citing *Beard v. Udall*, 648 F.2d 1264 (9th Cir. 1981), asserts judicial immunity does not apply "if a judge connives with one of the parties to predetermine the outcome of a judicial proceeding." (Opp. at 6). *Beard*, however, has been overruled. Sitting *en banc*, the Ninth Circuit held: "allegations that a conspiracy produced a certain decision should no more pierce the actor's immunity than allegations of bad faith, personal interest or outright malevolence." *Ashelman v. Pope*, 793 F.2d 1072, 1077-78 (9th Cir. 1986) *(en banc)*. Plaintiff also argues that immunity does not extend to criminal cases. (Opp. at 5). But that argument does not assist Plaintiff, as this is a *civil* case.

The essence of Plaintiff's claims are based on the following allegations: (1) the moving Defendants were aware that a University attorney "fraudulently accused" another employee of destroying case files relevant to *Singh I* and *Singh II*. (Compl. ¶ 33); (2) Judge Cowett "ruled pages and pages of simple pleadings and evidence submitted in support of Plaintiff's opposition to Defendants' summary judgment motion as inadmissible." *(Id.* ¶ 35); (3) Judge Cowett "granted Provost [of the University] summary judgment and decided plaintiff owed

Provost $5000.00 dollars." *(Id.)*; (4) "Justices of the California Court of Appeal prevented access to the courts in Plaintiff's Title VII case by ordering the clerk not to file Plaintiff's March 1, 2007 pleadings requesting court order to catch Fraud Upon the Court." *(Id.* ¶ 62); (5) Defendant Cleesattle did not submit to the court a copy of a red handbook allegedly produced by Plaintiff during discovery in *Singh II. (Id.* ¶ 68, 126); (6) Plaintiff asked Judge Strauss to remove *Singh II* to Federal Court, *(Id.* ¶ 83), and Judge Strauss refused to rule, instead asking Plaintiff to file a regular noticed motion. *(Id.* ¶ 117); (7) Judge Cowett never mentioned the California Government Code which prohibits destruction of evidence in any of her orders, despite Plaintiff's allegations that the provision was violated. *(Id.* ¶ 112); (8) Judge Strauss refused to "unearth attorney fraud" at Plaintiff's request, instead asking Plaintiff to file a regular noticed motion. *(Id.* ¶ 116, 118); (9) "Fraud and Deceit prevented Plaintiff's May10, 2007 [hearing regarding attorney fraud] from being heard." *(Id.* ¶ 120); (10) Defendant Brown and other defendants filed a proposed order granting the defendants' motion for stay in *Singh II, (Id.* ¶ 123); yet, Plaintiff did not receive a signed order. *(Id.* ¶ 126).

Clearly, all of these allegations relate solely to acts taken while discharging official and litigation-related duties. Thus, the AG Defendants and Judicial Defendants are afforded immunity for the accused conduct. While Plaintiff argues the complaint can be amended to state claims against

these Defendants in their "individual" capacities, the bar of immunity still would apply. *Bly-Magee*, 236 F.3d at 1018. Plaintiff points out that the court in *Bly-Magee* granted leave to amend the complaint to include unofficial acts by defendants that would not be subject to immunity. But in *Bly-Magee*, the plaintiff already had attempted to make such allegations in the original complaint. *Id.* at 1018. Accordingly, the court granted plaintiff an opportunity to remedy certain deficiencies in the complaint. *Id.* at 1019. Here, Plaintiff filed a complaint in excess of fifty pages detailing his encounters with Defendants, in which *all* of the matters complained about involve official acts and litigation-related conduct stemming from *Singh I* and *Singh II*. Any amendment would therefore be futile under the circumstances.[2]

III.
CONCLUSION

For these reasons, Defendants' motions are granted. The Complaint is dismissed with prejudice

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[2] The Court declines to address the balance of Defendants' arguments as the argument regarding immunity is dispositive. Plaintiff also submitted a proposed order, in which he seeks reinstatement to his position at the University and other relief. As the proposed order relates to matters before the state court in *Singh II*, this Court respectfully declines to grant the relief requested.

as to the AG Defendants and the Judicial Defendants.

IT IS SO ORDERED.
DATED: November 13, 2007

s/ Dana M. Sabraw
HON. DANA M. SABRAW
United States District Judge

Case 3:07-cv-01615-DMS-BLM Document 27
Filed 05/29/08

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

RAHUL SINGH,

Plaintiff,

vs.

ALEX MCDONALD,
CHARLES REED,
CYNTHIA AARON,
DAVID T. HAYHURST,
EDWARD G. BROWN,
JAMES MCINTYRE,
JEREMY GOLDEN,
JODI L. CLEESATTLE,
JOEL C. GOLDEN,
NANCY A. MARLIN,
PATRICIA COWETT,
RICHARD STRAUSS,
STEPHEN WEBER,
SUSAN WESTOVER,
Defendants.

CASE NO. 07-CV-1615 (DMS-BLM)

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS
[Docs. 12 & 14]

Pending before the Court are two motions to dismiss. The first motion is brought by Defendants Jeremy Golden and Joel C. Golden ("Golden Defendants"). The second motion is brought by

David T. Hayhurst, Nancy A. Marlin, Stephen L. Weber, and Charles Reed, all of whom are associated with California State University ("University Defendants"), and Susan Westover ("Westover"), who represented the University Defendants in prior actions brought by Plaintiff. The motions were taken under submission without oral argument on March 1, 2008, pursuant to Local Civil Rule 7.1(d)(1). Having carefully reviewed the matter, the Court grants both motions and dismisses the complaint with prejudice.

I.
BACKGROUND

On October 13, 2004, Plaintiff filed a lawsuit against the Board of Trustees of the California State University in San Diego Superior Court ("*Singh I*"). Plaintiff alleged he was denied tenure and promotion in his tenure track position at the University in retaliation for complaining about gender discrimination against an applicant in his department. At that time, Plaintiff was represented by the Golden Defendants. Plaintiff alleges he turned over key evidence to the Golden Defendants, including a "red Handbook" containing evidence supporting Plaintiff's claims. (Compl. ¶ 34). The Honorable Patricia Y. Cowett presided over the case. On October 13, 2005, Plaintiff signed an agreement settling all claims with the University. Thereafter, on December 23, 2005, Judge Cowett granted the University's motion over Plaintiff's objections to enforce the settlement agreement, and entered judgment.

On February 15, 2006, Plaintiff appealed the judgment. He submitted both an appellate brief and a document entitled, "Appellant Requesting Court Order to Catch Fraud Upon the Court." The latter document was returned unfiled. Justices Alex C. McDonald, James A. McIntyre, and Cynthia Aaron heard the appeal, and on April 17, 2007, the panel affirmed the trial court's judgment. Plaintiff's subsequent petition for rehearing and petition for review in the California Supreme Court were denied.

On February 21, 2007, while his appeal was pending, Plaintiff filed a second action in San Diego Superior Court against the Board of Trustees of California State University, Stephen L. Weber, Nancy A. Marlin, and David T. Hayhurst. ("*Singh II*"). The second action repeated the allegations of the first, and was assigned to The Honorable Richard E. Strauss. On May 23, 2007, the Attorney General's Office associated as co-counsel for the defendants in *Singh II*, and thereafter moved for judgment on the pleadings. The motion was granted on grounds that the claims were barred by (a) the doctrine of *res judicata*, and (b) the parties' underlying settlement agreement and release.

On August 14, 2007, Plaintiff filed the instant action with this Court alleging the same misconduct against the University Defendants as alleged in *Singh I* and *Singh II*. ("Complaint," Doc. 1). In addition, it contains allegations of fraudulent misconduct by the Golden Defendants in connection with their representation of Plaintiff, and by Defendant Westover in her representation of the

University in *Singh I*.[1] All moving Defendants argue Plaintiff's complaint fails to state a claim upon which relief can be granted pursuant to Federal Rule of Civil Procedure 12(b)(6). The University Defendants also argue the claim is barred by the *Rooker-Feldman* doctrine, res judicata, settlement and release, the Eleventh Amendment, prosecutorial immunity and litigation privilege.

II.
DISCUSSION

A Rule 12(b)(6) dismissal is proper where a plaintiff fails to state a claim upon which relief can be granted. Fed. R. Civ. Proc. 12(b)(6). In reviewing the complaint, the court construes allegations of material fact in the light most favorable to the nonmoving party. *Id.*

A. The University Defendants and Defendant Westover

Both the *Rooker-Feldman* doctrine and *res judicata* bar Plaintiff's claims against the University Defendants. The *Rooker-Feldman* doctrine bars subject matter jurisdiction in federal court over appeals of state court judgments. *Maldonado v. Harris*, 370 F.3d 945, 949-50 (9th Cir. 2004). The doctrine of *res judicata* requires a federal court to attribute to a state court judgment the same

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[1] Plaintiff alleges he hired Joel C. Golden to represent him in *Singh I*, but also alleges misconduct by attorney Jeremy Golden, whose role is unclear.

preclusive effect as would be given that judgment under the law of the state in which the judgment was rendered. *Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). Under California law, res judicata "precludes parties or their privies from relitigating a cause of action that has been finally determined by a court of competent jurisdiction." *Intri-Plex Techs., Inc. v. Crest Group, Inc.*, 499 F.3d 1048, 1052-53 (9th Cir. 2007).

As with his state court complaints, Plaintiff seeks in the present action: reinstatement, compensatory and punitive damages, and equitable relief. (Compl. at 49). His prayer for relief arises out of the same facts alleged in his state court complaints. This is apparent from the face of the Complaint, which contains lengthy quotations from Plaintiff's state court pleadings. As these claims already have been adjudicated, the doctrine of *res judicata* prohibits this Court from adjudicating them anew.

Plaintiff alternatively argues this Court may "render review" of the state court decisions because his petitions for review in the California and United States Supreme Courts have been denied. (Compl. ¶ 82-83). The *Rooker-Feldman* doctrine, however, specifically prohibits this Court from reviewing the state court's adjudication of those claims. Accordingly, the claims against the University Defendants are dismissed with prejudice.

Prosecutorial immunity bars Plaintiff's claims against Defendant Westover. Attorneys representing state agencies have absolute immunity for their actions in representing the agencies in judicial and

adminstrative proceedings. *Butz v. Economou*, 438 U.S. 478, 517 (1978). Plaintiff's allegations against Westover all relate to her representation of the University Defendants in *Singh I*. Accordingly, the claims against Defendant Westover are dismissed with prejudice.

B. The Golden Defendants

The Court lacks subject matter jurisdiction over the claims asserted against the Golden Defendants. Plaintiff's claims against the Golden Defendants concern alleged misconduct during the course of their representation of Plaintiff in *Singh I*. Plaintiff has not alleged that "fraud upon the court," "stealing," and "tampering of evidence" regarding the Golden Defendants arise out of any federal question, nor has Plaintiff alleged diversity jurisdiction. Accordingly, jurisdiction is proper only if these claims form "part of the same case or controversy" as the claim over which the Court has original jurisdiction. *See* 28 U.S.C. § 1367(a). They do not.

While Plaintiff's Title VII claims arise out of the University's alleged unlawful termination of Plaintiff, the attorney-fraud claims arise out of the alleged mishandling of the subsequent lawsuit.[2] The

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[2] Plaintiff claims, "Attorney Golden's work in [*Singh I*] was tailored to be picked apart by Attorney Westover and Trial Court." (Compl 31). He further alleges that on summary judgment, Attorney Golden "discouraged Plaintiff from including a declaration[,]...cleverly left out key information including perjury and credibility issues of key administrators[, and] surprised and stunned Plaintiff by only giving an hours' notice before leaving town on

state law claims therefore do not form part of the same case or controversy as the federal Title VII claims. Since the Court lacks subject matter jurisdiction over the attorney-fraud claims, they are dismissed with prejudice.

III.
CONCLUSION

For these reasons, Defendants' motions are granted.[3] The Complaint is dismissed with prejudice as to all remaining Defendants. The Clerk shall terminate the case.

IT IS SO ORDERED.

DATED: May 29, 2008

s/ Dana M. Sabraw
HON. DANA M. SABRAW
United States District Judge

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vacation," thereby requiring Plaintiff to serve Defendant with summary judgment papers and "fraudulently abandoning" Plaintiff. (Compl. 36) Plaintiff alleges he fired Golden shortly thereafter, and when Golden returned Plaintiff's materials, he replaced Plaintiff's red Handbook with a "tampered Handbook favoring defendants." (Compl. 37).

[3] The Court declines to address the balance of Defendants' arguments as the matters discussed in this order are dispositive